

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 11-70

July 26, 2011

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Procedures for Referral to the Board for Ruling on
Petition to Revoke Investigative Subpoena

This memorandum supersedes Memorandum OM 10-11 and pertains only to investigative subpoenas.

In order to process petitions to revoke investigative subpoenas, all Regions should email such petitions and oppositions to the Board. The procedures for processing these actions are set forth below.¹

When a Region issues an investigative subpoena, the person or entity upon whom the subpoena is served may file with the Regional Director a petition to revoke the investigative subpoena. The Region should then prepare and file an opposition to the petition to revoke its investigative subpoena as soon as possible, generally within 5 business days after receipt of the petition to revoke.² The opposition should explain how the information sought is relevant to the specific charge allegations, and respond to the arguments raised in the petition. Pursuant to Section 102.31 of the Board's Rules and Regulations, the Regional Director is required to refer the petition to revoke to the Board for ruling. The referral generally is done by issuance of an order referring the matter to the Board.

Time is of the essence since the investigation may be held in abeyance pending the Board's ruling on the petition to revoke. In order to expedite a decision on the investigative subpoena and to avoid casehandling delays, Regions should make the referral to the Board by email to the office of the Solicitor. The email should be addressed to Solicitor@NLRB.gov. The subject line should include the case name and

¹ All documents filed through the E-filing system are automatically posted on the Agency's website. Because of concerns that investigative subpoenas and petitions to revoke these subpoenas (and their attachments) often contain case sensitive information in open cases, the decision has been made to file them by emailing these documents to the Solicitor.

² If the subpoenaed party indicates that despite filing its petition to revoke it is willing to work with the Region to produce the information voluntarily, then the Region may in its discretion delay the referral of the matter to the Board until the Region determines whether it is necessary to do so.

number and the designation: "Referral of Petition to Revoke." Inasmuch as the referral is an internal transfer, Regions should not E-file these documents.³

To facilitate this process, the referral email should include the following attachments:

1. Regional Director's order referring the petition to revoke and proof of service;
2. Petition to revoke with all attachments;
3. Subpoena and proof of service;
4. Region's opposition with all attachments, including a copy of the underlying charge, and proof of service.

If the subpoena issues are resolved prior to the issuance of a Board order regarding the petition to revoke, the Region should inform the Board of this fact as soon as possible by sending an email to Solicitor@NLRB.gov. Attached to the email should be a letter, addressed to the Executive Secretary with a copy to the subpoenaed party, stating the manner in which the matter was resolved and indicating that either the subpoena or the petition to revoke has been withdrawn. The Executive Secretary's Office will then issue a letter indicating that the matter has been closed as moot.

As you are probably aware, Regions receive the Board's Order on the petition to revoke by E-issuance.

If you have any questions regarding this memorandum, please contact your Assistant General Counsel or Deputy or the undersigned.

/s/
R.A.S.

cc: NLRBU
Release to the Public

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³ Conversely, petitions to revoke trial subpoenas filed with the Regional Director, and subsequent related documents, should be referred to the Division of Judges through the Agency's E-filing system and should not be emailed.